

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

PEREZ TRADING COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU** -0706

Decision No. **CU** -608

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by PEREZ TRADING COMPANY, INC., in the amount of \$6,947.41 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York on June 3, 1957 and that all times between June 3, 1957 and presentation of this claim on March 29, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that all of its stockholders were nationals of the United States.

The record contains copies of claimant's invoices and ledger sheets reflecting the sale of goods to various consignees in Cuba as follows:

<u>Consignee</u>	<u>Total</u>
Industria Electronica Razan	\$ 832.27
Huatas y Sisal S.A.	447.66
Domenech y Cia.	2,810.22
Antonio Garcia Otero	686.94
Rodriguez Alvarez y Cia.	2,010.12
Envases Industriales y Comerciales S.A.	34.33
Litorbitz S.A.	125.87
	<u>\$6,947.41</u>

Additionally, the record includes letters to the claimant advising it that payments on drafts had been made to collecting banks by some of the consignees as follows:

<u>Consignee</u>	<u>Draft Amount</u>	<u>Date of Information of Payment</u>	<u>Collecting Bank</u>
Industria Electronica	\$ 626.84 205.43	October 13, 1960 October 25, 1960	Banco Agricola e Industrial
Huatas y Sisal S.A.	447.66	November 4, 1960	Royal Bank of Canada
Domenech y Cia.	2,810.22	March 9, 1960	First National City Bank of N.Y.
Antonio Garcia Otero	686.94	January 2, 1960	National City Bank

Claimant was further informed that the collecting banks were awaiting authorization to effect reimbursement of the funds received. Claimant states that it has not received the funds.

There is no evidence of payment to a collecting bank of the amounts due from Rodriguez Alvarez y Cia, Envases Industriales y Comerciales S.A., and Litorbitz S.A. which amounts were due and owing on September 16, 1960, July 30, 1960 and May 3, 1960, respectively.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred as follows:

on October 14, 1960 as to \$	626.84
October 26, 1960	205.43
November 4, 1960	447.66
March 10, 1960	2,810.22
January 3, 1960	686.94
September 17, 1960	2,010.12
July 31, 1960	34.33
May 4, 1960	125.87

the dates being the days after the collections acknowledged by the collecting banks, in the case of drafts, and the days after payment was due on the other accounts.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that PEREZ TRADING COMPANY, INC. sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Thousand Nine Hundred Forty-Seven Dollars and Forty-One Cents (\$6,947.41), with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 15 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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